



Sen. David Koehler

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1 AMENDMENT TO SENATE BILL 2203

2 AMENDMENT NO. _____. Amend Senate Bill 2203, AS AMENDED,
3 by replacing everything after the enacting clause with the
4 following:

5 "Section 5. The Freedom of Information Act is amended by
6 changing Sections 1, 2, 3, 6, 7, and 9.5 and by adding Section
7 3.2 as follows:

8 (5 ILCS 140/1) (from Ch. 116, par. 201)

9 Sec. 1. Pursuant to the fundamental philosophy of the
10 American constitutional form of government, it is declared to
11 be the public policy of the State of Illinois that all persons
12 are entitled to full and complete information regarding the
13 affairs of government and the official acts and policies of
14 those who represent them as public officials and public
15 employees consistent with the terms of this Act. Such access is
16 necessary to enable the people to fulfill their duties of

1 discussing public issues fully and freely, making informed
2 political judgments and monitoring government to ensure that it
3 is being conducted in the public interest.

4 The General Assembly hereby declares that it is the public
5 policy of the State of Illinois that access by all persons to
6 public records promotes the transparency and accountability of
7 public bodies at all levels of government. It is a fundamental
8 obligation of government to operate openly and provide public
9 records as expediently and efficiently as possible in
10 compliance with this Act.

11 This Act is not intended to cause an unwarranted invasion
12 of personal privacy, nor to allow the requests of a commercial
13 enterprise to unduly burden public resources, nor to allow
14 vexatious requests for records to unduly burden public
15 resources, nor ~~or~~ to disrupt the duly-undertaken work of any
16 public body independent of the fulfillment of any of the
17 fore-mentioned rights of the people to access to information.

18 This Act is not intended to create an obligation on the
19 part of any public body to maintain or prepare any public
20 record which was not maintained or prepared by such public body
21 at the time when this Act becomes effective, except as
22 otherwise required by applicable local, State or federal law.

23 Restraints on access to information, to the extent
24 permitted by this Act, are limited exceptions to the principle
25 that the people of this State have a right to full disclosure
26 of information relating to the decisions, policies,

1 procedures, rules, standards, and other aspects of government
2 activity that affect the conduct of government and the lives of
3 any or all of the people. The provisions of this Act shall be
4 construed in accordance with this principle. This Act shall be
5 construed to require disclosure of requested information as
6 expediently and efficiently as possible and adherence to the
7 deadlines established in this Act.

8 The General Assembly recognizes that this Act imposes
9 fiscal obligations on public bodies to provide adequate staff
10 and equipment to comply with its requirements. The General
11 Assembly declares that providing records in compliance with the
12 requirements of this Act is a primary duty of public bodies to
13 the people of this State, and this Act should be construed to
14 this end, fiscal obligations notwithstanding.

15 The General Assembly further recognizes that technology
16 may advance at a rate that outpaces its ability to address
17 those advances legislatively. To the extent that this Act may
18 not expressly apply to those technological advances, this Act
19 should nonetheless be interpreted to further the declared
20 policy of this Act that public records shall be made available
21 upon request except when denial of access furthers the public
22 policy underlying a specific exemption.

23 This Act shall be the exclusive State statute on freedom of
24 information, except to the extent that other State statutes
25 might create additional restrictions on disclosure of
26 information or other laws in Illinois might create additional

1 obligations for disclosure of information to the public.

2 (Source: P.A. 96-542, eff. 1-1-10.)

3 (5 ILCS 140/2) (from Ch. 116, par. 202)

4 Sec. 2. Definitions. As used in this Act:

5 (a) "Public body" means all legislative, executive,
6 administrative, or advisory bodies of the State, state
7 universities and colleges, counties, townships, cities,
8 villages, incorporated towns, school districts and all other
9 municipal corporations, boards, bureaus, committees, or
10 commissions of this State, any subsidiary bodies of any of the
11 foregoing including but not limited to committees and
12 subcommittees thereof, and a School Finance Authority created
13 under Article 1E of the School Code. "Public body" does not
14 include a child death review team or the Illinois Child Death
15 Review Teams Executive Council established under the Child
16 Death Review Team Act.

17 (b) "Person" means any individual, corporation,
18 partnership, firm, organization or association, acting
19 individually or as a group.

20 (c) "Public records" means all records, reports, forms,
21 writings, letters, memoranda, books, papers, maps,
22 photographs, microfilms, cards, tapes, recordings, electronic
23 data processing records, electronic communications, recorded
24 information and all other documentary materials pertaining to
25 the transaction of public business, regardless of physical form

1 or characteristics, having been prepared by or for, or having
2 been or being used by, received by, in the possession of, or
3 under the control of any public body. Communications and
4 materials exchanged between a lobbyist and a public body that
5 concern either lobbying performed on behalf of the public body
6 by the lobbyist or the expenditure of public moneys for goods
7 or services provided on behalf of the public body by the
8 lobbyist are public records and are not exempt from inspection
9 and copying unless exempt under Section 7.

10 (c-5) "Private information" means unique identifiers,
11 including a person's social security number, driver's license
12 number, employee identification number, biometric identifiers,
13 personal financial information, passwords or other access
14 codes, medical records or information (such as treatment
15 histories, descriptions of injuries, information regarding the
16 hospital to which an injured person is taken, insurance policy
17 numbers, and pregnancy status), home or personal telephone
18 numbers, dates of birth, the names of applicants for public
19 employment, completed applications for public employment, and
20 personal email addresses. Private information also includes
21 home address and personal license plates, except as otherwise
22 provided by law or when compiled without possibility of
23 attribution to any person.

24 (c-10) "Commercial purpose" means the purpose or intent to
25 use ~~of~~ any part of a public record or records, or information
26 derived from public records, in any form for sale, resale, or

1 solicitation or advertisement for sales or services or to
2 otherwise further a commercial, trade, or profit interest or
3 enterprise, as those terms are commonly understood. For
4 purposes of this definition, requests made by news media and
5 non-profit, scientific, or academic organizations shall not be
6 considered to be made for a "commercial purpose" when the
7 principal purpose of the request is (i) to access and
8 disseminate information concerning news and current or passing
9 events, (ii) for articles of opinion or features of interest to
10 the public, or (iii) for the purpose of academic, scientific,
11 or public research or education. For purposes of this
12 definition, requests made by a member or employee of a public
13 body to either the public body of which the person is a member
14 or employee or to another public body shall not be considered
15 to be made for a commercial purpose if the information will be
16 used by that person in his or her official capacity or as part
17 of his or her employment.

18 (d) "Copying" means the reproduction of any public record
19 by means of any photographic, electronic, mechanical or other
20 process, device or means now known or hereafter developed and
21 available to the public body.

22 (e) "Head of the public body" means the president, mayor,
23 chairman, presiding officer, director, superintendent,
24 manager, supervisor or individual otherwise holding primary
25 executive and administrative authority for the public body, or
26 such person's duly authorized designee.

1 (f) "News media" means a newspaper or other periodical
2 issued at regular intervals whether in print or electronic
3 format, a news service whether in print or electronic format, a
4 radio station, a television station, a television network, a
5 community antenna television service, or a person or
6 corporation engaged in making news reels or other motion
7 picture news for public showing.

8 (g) "Vexatious request for records" means a request for
9 records that is made by a person who, in the 12 months
10 immediately preceding the request, has submitted to the same
11 public body (i) a minimum of 48 requests for records, (ii) a
12 minimum of 10 requests for records within a 30-day period,
13 (iii) a minimum of 5 requests for records within a 7-day
14 period, (iv) one or more requests for records that required a
15 response by the public body consisting of at least 1,500 pages
16 in the aggregate, or (v) one or more requests for records that
17 have sought a minimum of 20 different categories of records.
18 For the purposes of this definition, a request made by news
19 media shall not be considered a vexatious request for records
20 when the principal purpose of the request is (i) to access and
21 disseminate information concerning news and current or passing
22 events or (ii) for articles of opinion or features of interest
23 to the public.

24 (h) "Business day" means any calendar day except a
25 Saturday, Sunday, or legal holiday. For public bodies that are
26 organized or established pursuant to the School Code, "business

1 day" does not include any non-pupil attendance days between the
2 opening and closing of the school term specified in the
3 calendar established in accordance with Section 10-19 of the
4 School Code.

5 (Source: P.A. 96-261, eff. 1-1-10; 96-542, eff. 1-1-10;
6 96-1000, eff. 7-2-10.)

7 (5 ILCS 140/3) (from Ch. 116, par. 203)

8 Sec. 3. Inspection or copying of public records; no
9 exclusive right to access and dissemination; request
10 procedure.

11 (a) Each public body shall make available to any person for
12 inspection or copying all public records, except as otherwise
13 provided in Section 7 of this Act. Notwithstanding any other
14 law, a public body may not grant to any person or entity,
15 whether by contract, license, or otherwise, the exclusive right
16 to access and disseminate any public record as defined in this
17 Act.

18 (b) Subject to the fee provisions of Section 6 of this Act,
19 each public body shall promptly provide, to any person who
20 submits a request, a copy of any public record required to be
21 disclosed by subsection (a) of this Section and shall certify
22 such copy if so requested.

23 (c) Requests for inspection or copies shall be made in
24 writing and directed to the public body. Written requests may
25 be submitted to a public body via personal delivery, mail,

1 telefax, or other means available to the public body. A public
2 body may honor oral requests for inspection or copying. A
3 public body may not require that a request be submitted on a
4 standard form or require the requester to specify the purpose
5 for a request, except to determine whether the records are
6 requested for a commercial purpose or whether to grant a
7 request for a fee waiver. All requests for inspection and
8 copying received by a public body shall immediately be
9 forwarded to its Freedom of Information officer or designee.

10 (d) Each public body shall, promptly, either comply with or
11 deny a request for public records within 5 business days after
12 its receipt of the request, unless the time for response is
13 properly extended under subsection (e) of this Section. Denial
14 shall be in writing as provided in Section 9 of this Act.
15 Failure to comply with a written request, extend the time for
16 response, or deny a request within 5 business days after its
17 receipt shall be considered a denial of the request. A public
18 body that fails to respond to a request within the requisite
19 periods in this Section but thereafter provides the requester
20 with copies of the requested public records may not impose a
21 fee for such copies. A public body that fails to respond to a
22 request received may not treat the request as unduly burdensome
23 under subsection (g).

24 (e) The time for response under this Section may be
25 extended by the public body for not more than 5 business days
26 from the original due date for any of the following reasons:

1 (i) the requested records are stored in whole or in
2 part at other locations than the office having charge of
3 the requested records;

4 (ii) the request requires the collection of a
5 substantial number of specified records;

6 (iii) the request is couched in categorical terms and
7 requires an extensive search for the records responsive to
8 it;

9 (iv) the requested records have not been located in the
10 course of routine search and additional efforts are being
11 made to locate them;

12 (v) the requested records require examination and
13 evaluation by personnel having the necessary competence
14 and discretion to determine if they are exempt from
15 disclosure under Section 7 of this Act or should be
16 revealed only with appropriate deletions;

17 (vi) the request for records cannot be complied with by
18 the public body within the time limits prescribed by
19 paragraph (c) of this Section without unduly burdening or
20 interfering with the operations of the public body;

21 (vii) there is a need for consultation, which shall be
22 conducted with all practicable speed, with another public
23 body or among two or more components of a public body
24 having a substantial interest in the determination or in
25 the subject matter of the request.

26 The person making a request and the public body may agree

1 in writing to extend the time for compliance for a period to be
2 determined by the parties. If the requester and the public body
3 agree to extend the period for compliance, a failure by the
4 public body to comply with any previous deadlines shall not be
5 treated as a denial of the request for the records.

6 (f) When additional time is required for any of the above
7 reasons, the public body shall, within 5 business days after
8 receipt of the request, notify the person making the request of
9 the reasons for the extension and the date by which the
10 response will be forthcoming. Failure to respond within the
11 time permitted for extension shall be considered a denial of
12 the request. A public body that fails to respond to a request
13 within the time permitted for extension but thereafter provides
14 the requester with copies of the requested public records may
15 not impose a fee for those copies. A public body that requests
16 an extension and subsequently fails to respond to the request
17 may not treat the request as unduly burdensome under subsection
18 (g).

19 (g) Requests calling for all records falling within a
20 category shall be complied with unless compliance with the
21 request would be unduly burdensome for the complying public
22 body and there is no way to narrow the request and the burden
23 on the public body outweighs the public interest in the
24 information. Before invoking this exemption, the public body
25 shall extend to the person making the request an opportunity to
26 confer with it in an attempt to reduce the request to

1 manageable proportions. If any body responds to a categorical
2 request by stating that compliance would unduly burden its
3 operation and the conditions described above are met, it shall
4 do so in writing, specifying the reasons why it would be unduly
5 burdensome and the extent to which compliance will so burden
6 the operations of the public body. Such a response shall be
7 treated as a denial of the request for information.

8 Repeated requests from the same person for the same records
9 that are unchanged or identical to records previously provided
10 or properly denied under this Act shall be deemed unduly
11 burdensome under this provision.

12 (h) Each public body may promulgate rules and regulations
13 in conformity with the provisions of this Section pertaining to
14 the availability of records and procedures to be followed,
15 including:

16 (i) the times and places where such records will be
17 made available, and

18 (ii) the persons from whom such records may be
19 obtained.

20 (i) The time periods for compliance or denial of a request
21 to inspect or copy records set out in this Section shall not
22 apply to requests for records made for a commercial purpose.
23 Such requests shall be subject to the provisions of Section 3.1
24 of this Act.

25 (j) Notwithstanding any provision of this Act to the
26 contrary, if a public body receives a request from a person who

1 is incarcerated in a State correctional institution, it may
2 forward the request to the Freedom of Information officer for
3 the Illinois Department of Corrections within 5 business days
4 after receipt of the request. The Freedom of Information
5 officer for the Illinois Department of Corrections shall
6 attempt to locate all public records that are responsive to the
7 request and shall forward those public records to the requester
8 within 5 business days after he or she receives the request. If
9 the Freedom of Information officer for the Illinois Department
10 of Corrections is unable to locate all public records that are
11 responsive to a request, he or she shall submit a request for
12 any outstanding public records to the public body that is in
13 possession or control of those public records within 10
14 business days after the Freedom of Information officer for the
15 Illinois Department of Corrections is forwarded a request from
16 another public body. Upon receipt of the forwarded request the
17 public body shall respond within the time limits otherwise set
18 forth in this Act.

19 (Source: P.A. 96-542, eff. 1-1-10.)

20 (5 ILCS 140/3.2 new)

21 Sec. 3.2. Vexatious request for records.

22 (a) Notwithstanding any provision to the contrary, a public
23 body shall respond to a vexatious request for records within 21
24 working days after receipt. The response shall (i) provide to
25 the requester an estimate of the time required by the public

1 body to provide the records requested and an estimate of the
2 fees to be charged, which the public body may require the
3 person to pay in full before copying the requested documents,
4 (ii) deny the request pursuant to one or more of the exemptions
5 set out in this Act, (iii) notify the requester that the
6 request is unduly burdensome and extend an opportunity to the
7 requester to attempt to reduce the request to manageable
8 proportions, or (iv) provide the records requested.

9 (b) Within 5 working days after receiving a vexatious
10 request for records, the public body shall notify the requester
11 (i) that the public body is treating the request as a vexatious
12 request for records, (ii) of the reasons why the public body is
13 treating the request as a vexatious request for records, and
14 (iii) that the public body will send an initial response within
15 21 working days after receipt in accordance with subsection (a)
16 of this Section. The public body shall also notify the
17 requester of the proposed responses that can be asserted
18 pursuant to subsection (a) of this Section.

19 (c) Unless the records are exempt from disclosure, a public
20 body shall comply with a request within a reasonable period
21 considering the size and complexity of the request, and
22 prioritizing non-commercial or commercial requests for records
23 over vexatious requests for records.

24 (d) The Public Access Counselor shall adopt by
25 administrative rule procedures to create and maintain a log for
26 public bodies that are governed by subsection (a) of Section

1 9.5 of this Act to use for tracking vexatious requests for
2 records. The log shall track all requests submitted by a person
3 who has filed a vexatious request for records within the
4 12-month period described in the definition of "vexatious
5 request for records" in Section 2 of this Act. Upon receiving a
6 vexatious request for records, a public body shall promptly
7 send to the Public Access Counselor any information that is
8 necessary to complete an entry in the log.

9 (5 ILCS 140/6) (from Ch. 116, par. 206)

10 Sec. 6. Authority to charge fees.

11 (a) When a person requests a copy of a record maintained in
12 an electronic format, the public body shall furnish it in the
13 electronic format specified by the requester, if feasible. If
14 it is not feasible to furnish the public records in the
15 specified electronic format, then the public body shall furnish
16 it in the format in which it is maintained by the public body,
17 or in paper format at the option of the requester. A public
18 body may charge the requester for the actual cost of purchasing
19 the recording medium, whether disc, diskette, tape, or other
20 medium. A public body may ~~not~~ charge the requester for the
21 costs of any search for and review of the records or other
22 personnel costs associated with reproducing the records only as
23 permitted in subsection (f) of this Section. Except to the
24 extent that the General Assembly expressly provides, statutory
25 fees applicable to copies of public records when furnished in a

1 paper format shall not be applicable to those records when
2 furnished in an electronic format.

3 (b) Except when a fee is otherwise fixed by statute, each
4 public body may charge fees reasonably calculated to reimburse
5 its actual cost for reproducing and certifying public records
6 and for the use, by any person, of the equipment of the public
7 body to copy records. No fees shall be charged for the first 50
8 pages of black and white, letter or legal sized copies
9 requested by a requester. The fee for black and white, letter
10 or legal sized copies shall not exceed 15 cents per page. If a
11 public body provides copies in color or in a size other than
12 letter or legal, the public body may not charge more than its
13 actual cost for reproducing the records. In calculating its
14 actual cost for reproducing records or for the use of the
15 equipment of the public body to reproduce records, a public
16 body shall not include the costs of any search for and review
17 of the records or other personnel costs associated with
18 reproducing the records except as provided in subsection (f) of
19 this Section. Such fees shall be imposed according to a
20 standard scale of fees, established and made public by the body
21 imposing them. The cost for certifying a record shall not
22 exceed \$1.

23 (c) Documents shall be furnished without charge or at a
24 reduced charge, as determined by the public body, if the person
25 requesting the documents states the specific purpose for the
26 request and indicates that a waiver or reduction of the fee is

1 in the public interest. Waiver or reduction of the fee is in
2 the public interest if the principal purpose of the request is
3 to access and disseminate information regarding the health,
4 safety and welfare or the legal rights of the general public
5 and is not for the principal purpose of personal or commercial
6 benefit. For purposes of this subsection, "commercial benefit"
7 shall not apply to requests made by news media when the
8 principal purpose of the request is to access and disseminate
9 information regarding the health, safety, and welfare or the
10 legal rights of the general public. In setting the amount of
11 the waiver or reduction, the public body may take into
12 consideration the amount of materials requested and the cost of
13 copying them.

14 (d) The imposition of a fee not consistent with subsections
15 (6)(a) and (b) of this Act constitutes a denial of access to
16 public records for the purposes of judicial review.

17 (e) The fee for each abstract of a driver's record shall be
18 as provided in Section 6-118 of "The Illinois Vehicle Code",
19 approved September 29, 1969, as amended, whether furnished as a
20 paper copy or as an electronic copy.

21 (f) A public body may charge up to \$25 for each hour spent
22 by personnel in searching for and retrieving a requested
23 record. No fees shall be charged for the first 2 hours spent by
24 personnel in searching for or retrieving a requested record,
25 unless the request is made for a commercial purpose, in which
26 case fees may be charged for the first 2 hours.

1 A public body may charge the actual cost of retrieving and
2 transporting public records from an off-site storage facility
3 when the public records are maintained by a third-party storage
4 company under contract with the public body. If a public body
5 imposes a fee pursuant to this subsection (f), it must provide
6 the requester with an accounting of all fees, costs, and
7 personnel hours in connection with the request for public
8 records.

9 (g) When a public body determines or estimates that fees to
10 be charged under this Section will amount to more than \$100,
11 the public body shall notify the requester of the actual or
12 estimated amount of the fees, unless the requester has
13 indicated a willingness to pay fees as high as those
14 anticipated. If the public body is able to estimate only a
15 portion of the expected fee, the public body shall advise the
16 requester that the estimated fee may be only a portion of the
17 total fee. If a public body notifies a requester that the
18 actual or estimated fees will exceed \$100 and requests advance
19 payment or deposit of a specific amount by the requester, the
20 public body does not have to expend additional resources on the
21 request until the requester makes an advance payment or deposit
22 of the specific amount.

23 (h) Notwithstanding any provision of this Section to the
24 contrary, no fees shall be imposed on the person making the
25 request if (i) he or she is a member or employee of a public
26 body and (ii) he or she intends to use the requested

1 information in his or her official capacity or as part of his
2 or her employment.

3 (i) If a requester has previously failed to pay a properly
4 charged fee to the public body within 30 days after the date of
5 billing, the public body may require the requester to pay the
6 full amount due and to make an advance payment of the full
7 amount of any anticipated fee before the public body begins to
8 process a new request or continues to process a pending request
9 from that requester.

10 (j) If a public body reasonably believes that a requester
11 or group of requesters acting together is attempting to divide
12 a request into multiple series of requests for the purpose of
13 avoiding fees, the public body may aggregate those requests and
14 charge accordingly, provided that the public body notifies the
15 requester or requesters before taking that action.

16 (Source: P.A. 96-542, eff. 1-1-10; 96-1000, eff. 7-2-10.)

17 (5 ILCS 140/7) (from Ch. 116, par. 207)

18 Sec. 7. Exemptions.

19 (1) When a request is made to inspect or copy a public
20 record that contains information that is exempt from disclosure
21 under this Section, but also contains information that is not
22 exempt from disclosure, the public body may elect to redact the
23 information that is exempt. The public body shall make the
24 remaining information available for inspection and copying.
25 Subject to this requirement, the following shall be exempt from

1 inspection and copying:

2 (a) Information specifically prohibited from
3 disclosure by federal or State law or rules and regulations
4 implementing federal or State law.

5 (b) Private information, unless disclosure is required
6 by another provision of this Act, a State or federal law or
7 a court order.

8 (b-5) Files, documents, and other data or databases
9 maintained by one or more law enforcement agencies and
10 specifically designed to provide information to one or more
11 law enforcement agencies regarding the physical or mental
12 status of one or more individual subjects.

13 (c) Personal information contained within public
14 records, the disclosure of which would constitute a clearly
15 unwarranted invasion of personal privacy, unless the
16 disclosure is consented to in writing by the individual
17 subjects of the information.

18 "Unwarranted invasion of personal privacy" means the
19 disclosure of information that is highly personal or
20 objectionable to a reasonable person and in which the subject's
21 right to privacy outweighs any legitimate public interest in
22 obtaining the information. The disclosure of information that
23 bears on the public duties of public employees and officials
24 shall not be considered an invasion of personal privacy.

25 (d) Records in the possession of any public body
26 created in the course of administrative enforcement

1 proceedings, and any law enforcement or correctional
2 agency for law enforcement purposes, but only to the extent
3 that disclosure would:

4 (i) interfere with pending or actually and
5 reasonably contemplated law enforcement proceedings
6 conducted by any law enforcement or correctional
7 agency ~~that is the recipient of the request;~~

8 (ii) interfere with active administrative
9 enforcement proceedings conducted by any ~~the~~ public
10 body ~~that is the recipient of the request;~~

11 (iii) create a substantial likelihood that a
12 person will be deprived of a fair trial or an impartial
13 hearing;

14 (iv) unavoidably disclose the identity of a
15 confidential source, confidential information
16 furnished only by the confidential source, or persons
17 who file complaints with or provide information to
18 administrative, investigative, law enforcement, or
19 penal agencies; except that the identities of
20 witnesses to traffic accidents, traffic accident
21 reports, and rescue reports shall be provided by
22 agencies of local government, except when disclosure
23 would interfere with an active criminal investigation
24 conducted by the agency ~~that is the recipient of the~~
25 ~~request;~~

26 (v) disclose unique or specialized investigative

1 techniques other than those generally used and known or
2 disclose internal documents of correctional agencies
3 related to detection, observation, or investigation of
4 incidents of crime or misconduct, ~~and disclosure would~~
5 ~~result in demonstrable harm to the agency or public~~
6 ~~body that is the recipient of the request;~~

7 (vi) endanger the life or physical safety of law
8 enforcement personnel or any other person; or

9 (vii) obstruct an ongoing criminal investigation
10 ~~by the agency that is the recipient of the request.~~

11 For the purposes of this paragraph (d), if the recipient of
12 the request for records is other than (i) the public body that
13 is contemplating or conducting the administrative enforcement
14 proceeding or investigation or (ii) the law enforcement or
15 correctional agency that is contemplating or conducting the law
16 enforcement proceeding or investigation, then the original
17 recipient of the request shall transmit the request to the
18 Freedom of Information officer of the public body that is
19 contemplating or conducting the proceeding or investigation
20 within 2 business days after the receipt of the request. The
21 original recipient of the request shall notify the requester
22 that the request for records was transmitted to another public
23 body and shall identify the public body to which the request
24 was forwarded. Upon receipt of the forwarded request, the
25 public body shall respond to the request within the time limits
26 otherwise set forth in this Act.

1 (e) Records that relate to or affect the security of
2 correctional institutions and detention facilities.

3 (f) Preliminary drafts, notes, recommendations,
4 memoranda and any other records in which opinions are
5 expressed, or policies or actions are formulated, except
6 that a specific record or relevant portion of a record
7 shall not be exempt when the record is publicly cited and
8 identified by the head of the public body. The exemption
9 provided in this paragraph (f) extends to all those records
10 of officers and agencies of the General Assembly that
11 pertain to the preparation of legislative documents.

12 (g) Trade secrets and commercial or financial
13 information obtained from a person or business where the
14 trade secrets or commercial or financial information are
15 furnished under a claim that they are proprietary,
16 privileged or confidential, and that disclosure of the
17 trade secrets or commercial or financial information would
18 cause competitive harm to the person or business, and only
19 insofar as the claim directly applies to the records
20 requested.

21 The information included under this exemption includes
22 all trade secrets and commercial or financial information
23 obtained by a public body, including a public pension fund,
24 from a private equity fund or a privately held company
25 within the investment portfolio of a private equity fund as
26 a result of either investing or evaluating a potential

1 investment of public funds in a private equity fund. The
2 exemption contained in this item does not apply to the
3 aggregate financial performance information of a private
4 equity fund, nor to the identity of the fund's managers or
5 general partners. The exemption contained in this item does
6 not apply to the identity of a privately held company
7 within the investment portfolio of a private equity fund,
8 unless the disclosure of the identity of a privately held
9 company may cause competitive harm.

10 Nothing contained in this paragraph (g) shall be
11 construed to prevent a person or business from consenting
12 to disclosure.

13 (h) Proposals and bids for any contract, grant, or
14 agreement, including information which if it were
15 disclosed would frustrate procurement or give an advantage
16 to any person proposing to enter into a contractor
17 agreement with the body, until an award or final selection
18 is made. Information prepared by or for the body in
19 preparation of a bid solicitation shall be exempt until an
20 award or final selection is made.

21 (i) Valuable formulae, computer geographic systems,
22 designs, drawings and research data obtained or produced by
23 any public body when disclosure could reasonably be
24 expected to produce private gain or public loss. The
25 exemption for "computer geographic systems" provided in
26 this paragraph (i) does not extend to requests made by news

1 media as defined in Section 2 of this Act when the
2 requested information is not otherwise exempt and the only
3 purpose of the request is to access and disseminate
4 information regarding the health, safety, welfare, or
5 legal rights of the general public.

6 (j) The following information pertaining to
7 educational matters:

8 (i) test questions, scoring keys and other
9 examination data used to administer an academic
10 examination;

11 (ii) information received by a primary or
12 secondary school, college, or university under its
13 procedures for the evaluation of faculty members by
14 their academic peers;

15 (iii) information concerning a school or
16 university's adjudication of student disciplinary
17 cases, but only to the extent that disclosure would
18 unavoidably reveal the identity of the student; and

19 (iv) course materials or research materials used
20 by faculty members.

21 (k) Architects' plans, engineers' technical
22 submissions, and other construction related technical
23 documents for projects not constructed or developed in
24 whole or in part with public funds and the same for
25 projects constructed or developed with public funds,
26 including but not limited to power generating and

1 distribution stations and other transmission and
2 distribution facilities, water treatment facilities,
3 airport facilities, sport stadiums, convention centers,
4 and all government owned, operated, or occupied buildings,
5 but only to the extent that disclosure would compromise
6 security.

7 (l) Minutes of meetings of public bodies closed to the
8 public as provided in the Open Meetings Act until the
9 public body makes the minutes available to the public under
10 Section 2.06 of the Open Meetings Act.

11 (m) Communications between a public body and an
12 attorney or auditor representing the public body that would
13 not be subject to discovery in litigation, and materials
14 prepared or compiled by or for a public body in
15 anticipation of a criminal, civil or administrative
16 proceeding upon the request of an attorney advising the
17 public body, and materials prepared or compiled with
18 respect to internal audits of public bodies. However,
19 communications and materials exchanged between a lobbyist
20 and a public body that concern either lobbying performed on
21 behalf of the public body by the lobbyist or the
22 expenditure of public moneys for goods or services provided
23 on behalf of the public body by the lobbyist are public
24 records and are not exempt from inspection and copying
25 based solely on the lobbyist's status as an attorney or
26 auditor.

1 (n) Records relating to a public body's adjudication of
2 employee grievances or disciplinary cases; however, this
3 exemption shall not extend to the final outcome of cases in
4 which discipline is imposed.

5 (o) Administrative or technical information associated
6 with automated data processing operations, including but
7 not limited to software, operating protocols, computer
8 program abstracts, file layouts, source listings, object
9 modules, load modules, user guides, documentation
10 pertaining to all logical and physical design of
11 computerized systems, employee manuals, and any other
12 information that, if disclosed, would jeopardize the
13 security of the system or its data or the security of
14 materials exempt under this Section.

15 (p) Records relating to collective negotiating matters
16 between public bodies and their employees or
17 representatives, except that any final contract or
18 agreement shall be subject to inspection and copying.

19 (q) Test questions, scoring keys, and other
20 examination data used to determine the qualifications of an
21 applicant for a license or employment.

22 (r) The records, documents, and information relating
23 to real estate purchase negotiations until those
24 negotiations have been completed or otherwise terminated.
25 With regard to a parcel involved in a pending or actually
26 and reasonably contemplated eminent domain proceeding

1 under the Eminent Domain Act, records, documents and
2 information relating to that parcel shall be exempt except
3 as may be allowed under discovery rules adopted by the
4 Illinois Supreme Court. The records, documents and
5 information relating to a real estate sale shall be exempt
6 until a sale is consummated.

7 (s) Any and all proprietary information and records
8 related to the operation of an intergovernmental risk
9 management association or self-insurance pool or jointly
10 self-administered health and accident cooperative or pool.
11 Insurance or self insurance (including any
12 intergovernmental risk management association or self
13 insurance pool) claims, loss or risk management
14 information, records, data, advice or communications.

15 (t) Information contained in or related to
16 examination, operating, or condition reports prepared by,
17 on behalf of, or for the use of a public body responsible
18 for the regulation or supervision of financial
19 institutions or insurance companies, unless disclosure is
20 otherwise required by State law.

21 (u) Information that would disclose or might lead to
22 the disclosure of secret or confidential information,
23 codes, algorithms, programs, or private keys intended to be
24 used to create electronic or digital signatures under the
25 Electronic Commerce Security Act.

26 (v) Vulnerability assessments, security measures, and

1 response policies or plans that are designed to identify,
2 prevent, or respond to potential attacks upon a community's
3 population or systems, facilities, or installations, the
4 destruction or contamination of which would constitute a
5 clear and present danger to the health or safety of the
6 community, but only to the extent that disclosure could
7 reasonably be expected to jeopardize the effectiveness of
8 the measures or the safety of the personnel who implement
9 them or the public. Information exempt under this item may
10 include such things as details pertaining to the
11 mobilization or deployment of personnel or equipment, to
12 the operation of communication systems or protocols, or to
13 tactical operations.

14 (w) (Blank).

15 (x) Maps and other records regarding the location or
16 security of generation, transmission, distribution,
17 storage, gathering, treatment, or switching facilities
18 owned by a utility, by a power generator, or by the
19 Illinois Power Agency.

20 (y) Information contained in or related to proposals,
21 bids, or negotiations related to electric power
22 procurement under Section 1-75 of the Illinois Power Agency
23 Act and Section 16-111.5 of the Public Utilities Act that
24 is determined to be confidential and proprietary by the
25 Illinois Power Agency or by the Illinois Commerce
26 Commission.

1 (z) Information about students exempted from
2 disclosure under Sections 10-20.38 or 34-18.29 of the
3 School Code, and information about undergraduate students
4 enrolled at an institution of higher education exempted
5 from disclosure under Section 25 of the Illinois Credit
6 Card Marketing Act of 2009.

7 (aa) Information the disclosure of which is exempted
8 under the Viatical Settlements Act of 2009.

9 (bb) Records and information provided to a mortality
10 review team and records maintained by a mortality review
11 team appointed under the Department of Juvenile Justice
12 Mortality Review Team Act.

13 (cc) ~~(bb)~~ Information regarding interments,
14 entombments, or inurnments of human remains that are
15 submitted to the Cemetery Oversight Database under the
16 Cemetery Care Act or the Cemetery Oversight Act, whichever
17 is applicable.

18 (dd) The names, addresses, or other personal
19 information of participants, volunteers, and registrants
20 in programs of park districts, forest preserve districts,
21 conservation districts, recreation agencies, and special
22 recreation associations.

23 (ee) The names of subscribers to any magazine,
24 newsletter, periodical, or other publication of a public
25 body.

26 (ff) Personally identifiable information exempted from

1 disclosure by subsection (g) of Section 19.1 of the Toll
2 Highway Act.

3 (gg) Utility bills for individual customers of a
4 municipally owned or operated gas, electric, telephone, or
5 water utility company. However, this exemption does not
6 apply to any utility bills of a public body.

7 (hh) Investigative or crime scene photographs or video
8 recordings of a deceased person, a part of a deceased
9 person, or any part of a person's extreme, severe, or acute
10 injuries. However, that information shall be released in
11 accordance with this Act to the person depicted in the
12 photographs or video recordings, or if the person is
13 deceased, that information shall be released to the
14 person's surviving spouse, parents, adult siblings, or
15 adult children. This information shall also be released to
16 any public body or federal agency in furtherance of its
17 official duties and pursuant to a written request to the
18 public body in possession of the records.

19 (2) A public record that is not in the possession of a
20 public body but is in the possession of a party with whom the
21 agency has contracted to perform a governmental function on
22 behalf of the public body, and that directly relates to the
23 governmental function and is not otherwise exempt under this
24 Act, shall be considered a public record of the public body,
25 for purposes of this Act.

26 (3) This Section does not authorize withholding of

1 information or limit the availability of records to the public,
2 except as stated in this Section or otherwise provided in this
3 Act.

4 (Source: P.A. 95-331, eff. 8-21-07; 95-481, eff. 8-28-07;
5 95-941, eff. 8-29-08; 95-988, eff. 6-1-09; 96-261, eff. 1-1-10;
6 96-328, eff. 8-11-09; 96-542, eff. 1-1-10; 96-558, eff. 1-1-10;
7 96-736, eff. 7-1-10; 96-863, eff. 3-1-10; 96-1378, eff.
8 7-29-10; revised 9-2-10.)

9 (5 ILCS 140/9.5)

10 Sec. 9.5. Public Access Counselor; opinions.

11 (a) A person whose request to inspect or copy a public
12 record is denied by a public body, except the General Assembly
13 and committees, commissions, and agencies thereof, may file a
14 request for review with the Public Access Counselor established
15 in the Office of the Attorney General not later than 60 days
16 after the date of the final denial. The request for review must
17 be in writing, signed by the requester, and include (i) a copy
18 of the request for access to records and (ii) any responses
19 from the public body.

20 (b) A public body that receives a request for records, and
21 asserts that the records are exempt under subsection (1)(c) or
22 (1)(f) of Section 7 of this Act, shall, within the time periods
23 provided for responding to a request, provide written notice to
24 the requester and the Public Access Counselor of its intent to
25 deny the request in whole or in part. The notice shall include:

1 (i) a copy of the request for access to records; (ii) the
2 proposed response from the public body; and (iii) a detailed
3 summary of the public body's basis for asserting the exemption.
4 Upon receipt of a notice of intent to deny from a public body,
5 the Public Access Counselor shall determine whether further
6 inquiry is warranted. Within 5 working days after receipt of
7 the notice of intent to deny, the Public Access Counselor shall
8 notify the public body and the requester whether further
9 inquiry is warranted. If the Public Access Counselor determines
10 that further inquiry is warranted, the procedures set out in
11 this Section regarding the review of denials, including the
12 production of documents, shall also be applicable to the
13 inquiry and resolution of a notice of intent to deny from a
14 public body. Times for response or compliance by the public
15 body under Section 3 of this Act shall be tolled until the
16 Public Access Counselor concludes his or her inquiry.

17 Notwithstanding any other provision of this subsection
18 (b), a public body that receives a request for records and
19 asserts that those records are exempt under subsection (1)(c)
20 or (1)(f) of Section 7 of this Act has no duty to provide a
21 written notice of its intent not to disclose a date of birth,
22 medical or health information, the names of applicants for
23 public employment, or completed applications for public
24 employment.

25 (c) Upon receipt of a request for review, the Public Access
26 Counselor shall determine whether further action is warranted.

1 If the Public Access Counselor determines that the alleged
2 violation is unfounded, he or she shall so advise the requester
3 and the public body and no further action shall be undertaken.
4 In all other cases, the Public Access Counselor shall forward a
5 copy of the request for review to the public body within 7
6 working days after receipt and shall specify the records or
7 other documents that the public body shall furnish to
8 facilitate the review. Within 7 working days after receipt of
9 the request for review, the public body shall provide copies of
10 records requested and shall otherwise fully cooperate with the
11 Public Access Counselor. If a public body fails to furnish
12 specified records pursuant to this Section, or if otherwise
13 necessary, the Attorney General may issue a subpoena to any
14 person or public body having knowledge of or records pertaining
15 to a request for review of a denial of access to records under
16 the Act. To the extent that records or documents produced by a
17 public body contain information that is claimed to be exempt
18 from disclosure under Section 7 of this Act, the Public Access
19 Counselor shall not further disclose that information.

20 (d) Within 7 working days after it receives a copy of a
21 request for review and request for production of records from
22 the Public Access Counselor, the public body may, but is not
23 required to, answer the allegations of the request for review.
24 The answer may take the form of a letter, brief, or memorandum.
25 The Public Access Counselor shall forward a copy of the answer
26 to the person submitting the request for review, with any

1 alleged confidential information to which the request pertains
2 redacted from the copy. The requester may, but is not required
3 to, respond in writing to the answer within 7 working days and
4 shall provide a copy of the response to the public body.

5 (e) In addition to the request for review, and the answer
6 and the response thereto, if any, a requester or a public body
7 may furnish affidavits or records concerning any matter germane
8 to the review.

9 (f) Unless the Public Access Counselor extends the time by
10 no more than 21 business days by sending written notice to the
11 requester and the public body that includes a statement of the
12 reasons for the extension in the notice, or decides to address
13 the matter without the issuance of a binding opinion, the
14 Attorney General shall examine the issues and the records,
15 shall make findings of fact and conclusions of law, and shall
16 issue to the requester and the public body an opinion in
17 response to the request for review within 60 days after its
18 receipt. The opinion shall be binding upon both the requester
19 and the public body, subject to administrative review under
20 Section 11.5.

21 In responding to any request under this Section 9.5, the
22 Attorney General may exercise his or her discretion and choose
23 to resolve a request for review by mediation or by a means
24 other than the issuance of a binding opinion. The decision not
25 to issue a binding opinion shall not be reviewable.

26 Upon receipt of a binding opinion concluding that a

1 violation of this Act has occurred, the public body shall
2 either take necessary action immediately to comply with the
3 directive of the opinion or shall initiate administrative
4 review under Section 11.5. If the opinion concludes that no
5 violation of the Act has occurred, the requester may initiate
6 administrative review under Section 11.5.

7 A public body that discloses records in accordance with an
8 opinion of the Attorney General is immune from all liabilities
9 by reason thereof and shall not be liable for penalties under
10 this Act.

11 (g) If the requester files suit under Section 11 with
12 respect to the same denial that is the subject of a pending
13 request for review, the requester shall notify the Public
14 Access Counselor, and the Public Access Counselor shall take no
15 further action with respect to the request for review and shall
16 so notify the public body.

17 (h) The Attorney General may also issue advisory opinions
18 to public bodies regarding compliance with this Act. A review
19 may be initiated upon receipt of a written request from the
20 head of the public body or its attorney, which shall contain
21 sufficient accurate facts from which a determination can be
22 made. The Public Access Counselor may request additional
23 information from the public body in order to assist in the
24 review. A public body that relies in good faith on an advisory
25 opinion of the Attorney General in responding to a request is
26 not liable for penalties under this Act, so long as the facts

1 upon which the opinion is based have been fully and fairly
2 disclosed to the Public Access Counselor.

3 (Source: P.A. 96-542, eff. 1-1-10.)

4 Section 10. The Toll Highway Act is amended by adding
5 Section 19.1 as follows:

6 (605 ILCS 10/19.1 new)

7 Sec. 19.1. Confidentiality of personally identifiable
8 information obtained through electronic toll collection
9 system.

10 (a) Except as otherwise provided in this Section, the
11 Authority may not sell or otherwise provide to any person or
12 entity personally identifiable information of any electronic
13 toll collection system user that the Authority obtains through
14 the operation of its electronic toll collection system.

15 (b) The Authority may, within practical business and cost
16 constraints, store personally identifiable information of an
17 electronic toll collection system user only if the information
18 is required to perform account functions, such as billing,
19 account settlement, or toll violation enforcement activities.

20 (c) By no later than December 31, 2011, the Authority shall
21 establish a privacy policy regarding the collection and use of
22 personally identifiable information. Upon its adoption, the
23 policy shall be posted on the Authority's website and a copy
24 shall be included with each transponder transmitted to a user.

1 The policy shall include but need not be limited to the
2 following:

3 (1) A description of the types of personally
4 identifiable information collected by the Authority.

5 (2) The categories of third-party persons or entities
6 with whom the Authority may share personally identifiable
7 information and for what purposes that information is
8 shared.

9 (3) The process by which the Authority notifies
10 electronic toll collection system users of material
11 changes to its privacy policy.

12 (4) The process by which an electronic toll collection
13 system user may review and request changes to any of his or
14 her personally identifiable information.

15 (5) The effective date of the privacy policy.

16 (d) This Section does not prohibit the Authority from:

17 (1) providing aggregated traveler information derived
18 from collective data relating to a group or category of
19 electronic toll collection system users from which
20 personally identifiable information has been removed;

21 (2) sharing data with another transportation agency or
22 third-party vendor to comply with interoperability
23 specifications and standards regarding electronic toll
24 collection devices and technologies, provided that the
25 other transportation agency or third-party vendor may not
26 use personally identifiable information obtained under

1 this Section for a purpose other than described in this
2 Section;

3 (3) performing financial, legal and accounting
4 functions such as billing, account settlement, toll
5 violation enforcement, or other activities required to
6 operate and manage its toll collection system;

7 (4) communicating about products and services offered
8 by itself, a business partner, or another public agency;

9 (5) using personally identifiable information in
10 research projects, provided that appropriate
11 confidentiality restrictions are employed to protect
12 against the unauthorized release of such information;

13 (6) releasing personally identifiable information in
14 response to a warrant, subpoena or lawful order from a
15 court of competent jurisdiction;

16 (7) releasing personally identifiable information to
17 law enforcement agencies in the case of an emergency when
18 obtaining a warrant or subpoena would be impractical; and

19 (8) releasing personally identifiable information to
20 the Authority's Inspector General or, at the Inspector
21 General's direction, to law enforcement agencies under
22 paragraphs (5) and (6) of subsection (f) of Section 8.5 of
23 this Act.

24 (e) For purposes of this Section:

25 "Electronic toll collection system" is a system where a
26 transponder, camera-based vehicle identification system, or

1 other electronic medium is used to deduct payment of a toll
2 from a subscriber's account or to establish an obligation to
3 pay a toll.

4 "Electronic toll collection system user" means any natural
5 person who subscribes to an electronic toll collection system
6 or any natural person who uses a tolled transportation facility
7 that employs the Authority's electronic toll collection
8 system.

9 "Personally identifiable information" means any
10 information that identifies or describes an electronic toll
11 collection system user, including but not limited to travel
12 pattern data, address, telephone number, e-mail address,
13 license plate number, photograph, vehicle location, bank
14 account information, or credit card number.

15 (f) In any agreement allowing another public entity to use
16 the Authority's toll collection system in a transportation
17 facility, the Authority shall require the other public entity
18 to comply with the requirements of this Section.

19 (g) Personally identifiable information generated through
20 the Authority's toll collection process that reveals the date,
21 time, location or direction of travel by an electronic toll
22 collection system user shall be exempt from release under the
23 Illinois Freedom of Information Act. The exemption in this
24 subsection shall not apply to information that concerns (i) the
25 public duties of public employees; (ii) whether an electronic
26 toll collection system user has paid tolls; (iii) whether the

1 Authority is enforcing toll violation penalties against
2 electronic toll collection users who do not pay tolls; (iv)
3 accidents or other incidents that occur on highways under the
4 jurisdiction of the Authority; or (v) other operations of the
5 Authority.

6 Section 99. Effective date. This Act takes effect upon
7 becoming law."